

REMARKS

Claims 1-39 were examined. Applicant has amended claims 1 and 30. No claims are cancelled or are newly presented. No new matter has been introduced. Applicants thank the Examiner for withdrawal of the rejections under 35 USC §112, first paragraph.

Rejections under 35 USC §112, second paragraph

Claims 1-30 are rejected under §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner asserts that "[t]he amendment to claims 1 and 30 is not a positive recitation of limitation, the language 'can be used' is an alternative rendering the limitation indefinite..." (Pages 2-3 of the instant Final Office Action).

Applicants have amended claims 1 and 30 to read, "--wherein pre-positioning of the selected tissues is used to shape a thermal lesion--", thereby reciting a positive limitation.

Double Patenting Rejection

Claims 1-3, 8, 10-22, 24-26 and 30 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 7 and 17 of US 6,470,216. (Page 3 of the instant Final Office Action). With respect to Applicants' previous amendment, the Examiner asserts that "the rejection stand as previously rejected since alternative language is used in the amendment." (Page 2 of the instant Final Office Action).

Applicants submit that claims 1 and 30 have been amended to remove the alternative language and now read, "--wherein pre-positioning of the selected tissues is used to shape a thermal lesion--".

Applicants respectfully maintain, for the reasons previously set forth in the Response filed September 18, 2007, that claims 1, 7 and 17 of US Patent 6,470,216

(the '216 patent) do not recite "pre-positioning tissue at the tissue cite into an aesthetically corrected configuration.". Also, claim 30 recites additional limitations not found in claims 1, 7 and 17 of the '216 patent.

Nevertheless, without acquiescing to the assertions made by the examiner and simply to expedited prosecution of the instant application, Applicants have attached a Terminal Disclaimer to overcome this rejection.

Rejections under 35 USC 6102

Claims 1-11, 14-24, 26-29, 31-39 stand rejected under §102(b) as being anticipated by Knowlton (6,350,276). With respect to Applicants' previous amendments, the Examiner asserts that "[t]he new limitation is not positively recited and therefore is optional, so the claims remain rejected as in the 03/19/2007 office action." (Page 2 of the instant Final Office Action).

Applicants submit that claims 1 and 30 have been amended to remove the alternative language and now read, "--wherein pre-positioning of the selected tissues is used to shape a thermal lesion--".

For the reasons previously outlined in the Responses filed on June 21, 2006 and September 18, 2007, Applicants maintain that Knowlton (the '276 patent) does not anticipate the instant application.

Claim 1 and 30 of the present application have been amended to include the limitation "pre-positioning tissue at the tissue into an aesthetically corrected configuration; wherein pre-positioning of the selected tissues is used to shape a thermal lesion so as to create or facilitate the creation of a directed wound healing response." The '276 patent does not disclose or teach pre-positioning of tissue to shape a thermal lesion.

The Examiner further asserts that "Knowlton ['276 patent] clearly include pre-positioning for example in the background of the invention liposuction is used prior to the treatment which constitutes pre-positioning. Additionally, it is inherent to pre-position the patient so as to access the treatment area which also constitutes pre-positioning." (pages 2 and 4 of the instant Final Office Action).

Applicants submit that the Examiner misinterprets the teaching of the instant application with respect to what constitutes “pre-positioning of the **tissue**”. Paragraph [0237] of the instant specification clearly states that the vectored pre-positioning of the selected tissue is “used to shape the thermal lesion so as to create or facilitate the creation of a directed wound healing response.” To this end, the instant specification discloses that “a number of surgical techniques can be employed, including but not limited to, pre-positioning the selected tissue by hand, suturing the tissue in place, using a steri strip, using a surgical/tissue adhesive, or using a surgical clamping device known in the art.”

One skilled in the art would understand that the “pre-positioning of the tissue” in the instantly claimed method involves a local target tissue site being held in a very specific orientation or position prior to the application of energy to induce thermal adhesions or lesions and producing collagen contraction and/or wound healing within the tissue site that produces a desired amount of local tissue remodeling.

Further, one skilled in the art would not confuse the removal of tissue, as occurs with liposuction, with the repositioning of tissue, as in the instant application, in order to shape a thermal lesion and create or facilitate a directed wound healing response. Moreover, one skilled in the art would not confuse pre-positioning of a patient with the more specific and local manipulation of a target tissue “to shape the thermal lesion so as to create or facilitate the creation of a directed wound healing response.” (Paragraph [0237] of the Instant specification).

Rejections under 35 USC §103

Claims 12-13, 25 and 30 stand rejected under §102(a) as anticipated by or, in the alternative, under §103(a) as obvious over Knowlton.

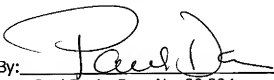
Applicants maintain, for the reasons above and previously made of record in the Response of September 18, 2007, that Knowlton does not disclose each and every limitation of Claims 1 or 30, or those claims dependent thereupon, because Knowlton does not disclose pre-positioning of tissue to shape a thermal lesion. Accordingly, since the instant claims are not anticipated nor obvious over Knowlton, Applicants respectfully request withdrawal of the present rejection.

CONCLUSION

Applicant believes that the application is in condition for allowance. The Commissioner is authorized to charge Deposit Account 08-1641 for any payment due in connection with this paper, including petition fees and extension of time fees.

Respectfully submitted,
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